IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.581 of 2002

N.E.P.C. Textiles Ltd.,
rep.by its Director,
SF-256, Kannampalayam Post,
Trichy Road,
Coimbatore - 641 402. ... Appellant/Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
Post Box No.3875,
Dr.Balasundaram Road,
Coimbatore - 641 018. ... Respondent/Respondent

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.2621 of 1997 dated 10.12.2001.presented to this Court under article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the respondent in its order No. D6/TN/CBE/ENF/21376/TPR/III/97 dated 14.02.97 quash the same

For Appellant : Mr.R.Parthiban

For Respondent : Ms.V.J.Latha

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JUDGMENT

N. PAUL VASANTHAKUMAR, J.

This writ appeal is filed against the order made in W.P.No.2621 of 1997 dated 10.12.2001 declining to interfere with the proceedings of the respondent dated 14.2.1997.

2. The brief facts necessary for disposal of this writ appeal are as follows.

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(a) Appellant is a Textile Mill, engaged in the manufacture of cotton yarn. The Mill was originally owned by M/s.Bharat Textiles, which was a partnership firm and it was taken over by the petitioner Mill with effect from 14.2.1994. According to the appellant Mill, at the time of taking over, the Mill had only 3000 spindles and after that the appellant added another 3000 spindles in the same unit and established a new unit known as Unit-II with spindleage of 18,000.

(b) At the time of taking over, eight employees were employed in the Bharat Textiles and they were absorbed by the appellant Mill and in respect of them, contribution under the Employees Provident Fund and Miscellaneous Provisions Act were made by the appellant Mill. After establishment of Unit-II, production started from April, 1995 and the appellant Mill employed number of apprentices over a period of time and according to the appellant, the said apprentices were engaged as per the standing orders.

(c) The respondent, by proceeding dated 19.7.1996 issued a notice stating that the appellant had failed to extend the benefits of the Employees Provident Fund to a large number of employees including the casual/contract/ temporary employees and therefore the petitioner was directed to appear for an enquiry with all records. On 1.10.1996, the appellant submitted a representation and stated that all the persons engaged were only apprentices under the standing orders of the Mill and they were being paid stipend during the training period as per the scheme and apprentices are excluded from the purview of the definition of "employees" under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and therefore the question of paying contribution towards Employees Provident Fund in respect of the said apprentices does not arise.

(d) An enquiry was conducted on 1.10.1996 and the appellant produced copy of the documents including the certified standing orders and thereafter by letter dated 11.12.1996 the respondent observed that 75% of the establishment's total work force comprise of apprentices and therefore they should be considered as 'Employees' under the Act with a direction to the appellant to enroll all the apprentices and extent the benefit of the Act for them. The respondent also stated that ESI contributions were deducted in respect of the apprentices and therefore they are bound to be given EPF benefit also.

(e) According to the appellant, from December, 1996, the provident fund contribution is being paid and from October, 1994 to April, 1995, the appellant is not liable to pay provident fund contribution.

(f) By the impugned order dated 14.2.1997, the appellant was directed to enroll all the apprentices under ESI Scheme and the appellant was directed to pay a sum of Rs.8,30,322.85 within a period of 15 days. The said order was challenged by the appellant on the ground that the 'apprentice' is not an 'employee' within the

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meaning of the Act and they are excluded from the definition of employee and no contribution is payable in respect of the apprentices. It is also stated that merely because the apprentices are covered under the ESI Act, the management cannot be compelled to pay contribution to the Provident Fund.

3. The respondent has filed counter affidavit wherein it is stated that the appellant is employing several persons under the name and style of 'apprentices' only to avoid the statutory liability and more than 75% of the labour force is treated as apprentices by the appellant Mill. It is stated that after issuing notice and receiving explanation, an enquiry was conducted and during the enquiry, the wage register, attendance register, etc. were gone into by the respondents and a factual finding was arrived at and thereafter only the impugned order was passed. It is also stated in the counter affidavit that after issuance of notice, only the certified standing order was ratified on 20.9.1996 and the period for which the enquiry was conducted, there was no certified standing order. It is further submitted that on scrutiny of records, inspection of the premises and after enquiry, it was found that the respondent had engaged more number of apprentices than the regular employees and the apprentices are doing regular work of the establishment and they were not learners and no period is specified for the apprentices. It is further elaborated that out of the 123 employees in the year 1995, 80 were shown as apprentices; and out of the 247 employees in the year 1996, 177 were shown as apprentices. It is also stated that the so called apprentices were paid wages for the work and the payment were directly linked to the number of days they attended work and therefore the apprentices are directly contributing to the production of the establishment and are not learners.

4. On consideration of the rival contentions, the learned single Judge dismissed the writ petition on 10.12.2001 taking note of the stand taken by the appellant by letter dated 27.12.1996, in which the appellant requested the respondent to grant one year grace period from May, 1995 to April, 1996 for paying the contribution of the Provident Fund. The said letter clearly establishes the admission of the liability of the appellant to pay contribution towards Provident Fund.

5. The learned counsel for the appellant submitted that merely because the impugned order was passed by the respondent solely on the ground that the appellant remitted ESI contribution to the apprentices and the apprentices having been exempted under section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and they having been engaged under the certified standing orders, the respondent has no jurisdiction to direct the appellant to remit the contribution towards Employees Provident Fund in respect of the apprentices. In support of his contention, the learned counsel cited the decision of the Honourable Supreme Court reported in (2006) 2 SCC 381 (Regional Provident Fund Commissioner, Mangalore v. Central Arecanut & Coca

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Marketing and Processing Co-op. Ltd., Mangalore).

6. The learned counsel for the respondent on the other hand submitted that the appellant is evading payment of Provident Fund contribution to the workmen on the guise of having engaged apprentices for the regular work and a factual finding is given by the respondent after perusal of the wage register, attendance register, etc. to the effect that the term 'apprentice' is used instead of 'workmen' only to defeat the provisions of the Act. The learned counsel further argued that the fact finding authority has come to the conclusion that more than 75% of the works in the appellant Mill are being carried out by the so called apprentices and therefore they cannot be treated as trainees/learners and they are paid regular wages as per the number of days of their employment and the same cannot be treated as stipend.

7. We have considered the rival submissions made by the learned counsel for the appellant as well as the learned counsel for the respondent in the light of the pleadings as well as the order of the learned single Judge dated 10.12.2001.

8. Admittedly the appellant is paying contribution in respect of the so called apprentices towards Employees Provident Fund from May, 1996, and requested the respondent on 27.12.1996 to give one year grace period for the payment of contribution towards Provident Fund from May 1995 to April, 1996. The said stand clearly establishes the factual aspect that the appellant has not engaged apprentices and they are treated as regular workmen. If at all the contention of the appellant is to be accepted that the appellant is engaging only apprentices and they shall not be treated as employees, the same should be the stand throughout. On the contrary, one year grace period alone was sought for and the same was rejected. There is no basis to claim one year grace period by the appellant as it is factually found by the respondent in the impugned order after perusing the records and after hearing the representative of the appellant Mill on 12.2.1997.

9. A categorical finding is given by the respondent after perusing the records that a modern textile mill like the appellant establishment cannot run solely on the strength of the apprentices alone. Hence the respondent was of the view that the workmen in question were the actual employees of the appellant establishment and should be enrolled to the Provident Fund Scheme right from the date of their eligibility. The respondent also perused the wage register and attendance register and found that the persons in question were paid the wages for the actual days of their employment and not paid any stipend as contended by the appellant.

10. The decision cited by the learned counsel for the appellant reported in (2006) 2 SCC 381 (Regional Provident Fund Commissioner, Mangalore v. Central Arecanut & Coca Marketing and Processing Co-op. Ltd., Mangalore) will not help the appellant as factually the respondent has proved that actually the appellant has not engaged apprentices and they are treated as regular employees

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and wages are paid for actual days of their employment and only to circumvent the statutory liability the appellant Mill has claimed that the persons are engaged as apprentices and not as regular employees. If really the appellant has not employed the persons as regular employees and not paid salary and paying only stipend, definitely appellant is entitled to get the benefits under section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Relying upon the documentary evidences, a categorical factual finding is given by the respondent that the said persons are not engaged as apprentices, but as workmen. Hence the said decision cannot he held applicable to the facts of this case.

11. The respondent being a statutory authority, exercised powers conferred on him under section 7(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and factually found that the appellant is liable to pay contribution to the Employees Provident Fund and specifically found that the persons engaged by the appellant are employees and not apprentices. There is no perversity in the said finding. The said order is upheld by the learned single Judge. There is no error apparent on the face of the order of the respondent as well as the order of the learned single Judge inviting interfere in the writ appeal.

12. We do not find any merit in the writ appeal and the same is dismissed. No costs.

Vr/

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
Post Box No.3875,
Dr.Balasundaram Road,
Coimbatore - 641 018.

+ ONE CC TO MRS. V.J. Latha, Advocate sr no. 3887

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